

Appl. No.: 10/691,432

Amendment Dated: 3/16/2006

Reply to OA of 9/16/2006

**REMARKS**

This amendment is responsive to the Action dated September 16, 2005. With this response, Applicant has filed a three (3) month extension of time extending the effective period for reply to March 16<sup>th</sup>, 2005. With this response, certain of the claims have been amended, as above. Support for the amendments can be found in the original specification, figures and/or claims and, as such, no new matter has been introduced. Applicant notes that such amendments were merely ministerial, cleaning up the claim language and was not required to overcome any particular rejection. In this regard, such amendments were not intended to narrow any of the claim elements, or limit equivalents thereto.

Applicant believes the foregoing amendments and following remarks to be fully-responsive to the outstanding action. Upon entry of this response, reconsideration of the pending application is respectfully requested.

**§103(a) Rejection of Claims 1, 3, 4, 5, 24, 26, 28, 34, 35, 37-39, 41, 42, 44 and 46**

In paragraphs 2 through 4 of the Action, claims 1, 3, 4, 5, 24, 26, 28, 34, 35, 37-39, 41, 42, 44 and 46 were rejected as being unpatentable over Namakura (USP 5216693) in view of a Menk (USP 5,251,238) pursuant to 35 USC §103(a). In response, Applicant respectfully traverses the rejection of such claims.

Despite the characterization in the Action, Applicant respectfully submits that the Action has failed to provide a prima facie basis for the the §103(a) rejection of the foregoing claims, as shown illustratively with respect to claim 1. In particular, Applicant has failed to identify within Menk any disclosure or suggestion that the logic adjusts the delay applied to the correlators based solely on the output of such correlators. The citation provided in the Action (6:8-45) fails

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to teach or suggest that the determination of the delay is based solely on the output of the correlators, but uses one or more additional factors.

Insofar as the citation relied upon in the Action fails to provide the prima facie basis for the rejection of, e.g., claim 1, Applicant respectfully requests that the §103(a) rejection of claim 1 be withdrawn.

Applicant notes that claims 3, 4, 5, 24, 26, 28, 34, 35, 37-39, 41, 42, 44 and 46 either depend from, or enjoy similar features to claim 1. Applicant respectfully submits that such claims are patentable over the cited references by virtue of the analysis presented above with respect to claim 1. Accordingly, Applicant respectfully requests that the §103(a) rejection of such claims be withdrawn.

At the onset, Applicant would like to thank the Examiner for the identification of allowable subject matter in claims 6-23.

**§102(e) Rejection of claims 1, 3, 5, 11-16, 21, 22, 24, 26-29, 30-33, 34, 36 and 41**

In paragraphs 3 and 4 of the Action, claims 1, 3, 5, 11-16, 21, 22, 24, 26-29, 30-33, 34, 36 and 41 were rejected as being anticipated by a patent issued to Wallentin, et al. (USP 6,594,238), pursuant to 35 USC §102(e). In response, Applicant respectfully traverses the rejection of such claims.

In particular, despite the characterization in the Action, Applicant has failed to find any support in the Wallentin reference that teaches each and every element of, e.g., rejected claims 1, 21, 30, 34 and 41 as presented in such claims. Applicant notes that an anticipation rejection under 35 USC § 102 requires the disclosure in a single prior art reference of each element of the

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claim under consideration. See *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987).

It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). “The *identical invention* must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131 (emphasis added).

In this case, the Wallentin reference simply fails to teach or fairly suggest a mechanism for scheduling the transmission of content as presented in, e.g., rejected claims 1, 21, 30, 34 and 41. By way of example, and not limitation, the passage cited in the Action (col. 1, ln. 39 and col. 4, lines 37-38) fails to teach or fairly suggest to one skilled in the art a base transceiver station generating a schedule that includes time slots and frequency blocks. Rather, the citations refer broadly to a GSM system in the first instance, and then an implementation of a WCDMA system in the second instance. Neither of such passages even mention generating a transmission schedule.

In this regard, Applicant respectfully submits that the Action has failed to establish the requisite prima facie basis to support the rejection of, e.g., rejected claims 1, 21, 30, 34 and 41. Accordingly, Applicant respectfully requests that the §102(e) rejection of such claims be withdrawn.

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Applicant notes that claims 3, 5, 11-16, 22, 24, 26-29, 31-33, and 36 each depend from patentable base claims 1, 21, 30, 34 or 41, respectively. Accordingly, in addition to any independent basis for patentability, Applicant respectfully submits that such claims are similarly allowable over the Wallentin reference by virtue of at least such dependency. Thus, Applicant respectfully requests that the §102(e) rejection of such claims be withdrawn.

**Objection to claims 2, 25, 27, 29-33, 36, 40, 43, 45 and 47**

In paragraph 6 of the Action, claims 2, 25, 27, 29-33, 36, 40, 43, 45 and 47 were merely objected to as being dependent upon rejected base claims. In view of the foregoing analysis, Applicant respectfully submits that the basis for such objection have been traversed, and respectfully requests that the objection thereof be withdrawn.

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**CONCLUSION**

Applicant respectfully submits that claims 1-47 are in condition for allowance and such action is earnestly solicited. *The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.*

Please charge any shortages and credit any overcharges to our Deposit Account number 50-0221.

Respectfully submitted,  
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Date: March 16, 2006

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